

**BEFORE THE BOARD OF SUPERVISORS OF THE TOWNSHIP OF WEST DEER, ALLEGHENY COUNTY, COMMONWEALTH OF PENNSYLVANIA**

IN THE MATTER OF: )  
 )  
Conditional Use Application of Hyperion )  
Midstream LLC; Leto Compressor Station )

**FINDINGS, CONCLUSIONS AND DECISION**

**WHEREAS**, on or about June 30, 2023, the Applicant, Hyperion Midstream LLC (“Hyperion” or “Applicant”) filed a Conditional Use Application and supporting documents seeking approval from the Township of West Deer (“Township”) for the construction and operation of a natural gas compressor station (the “Leto Compressor Station”); and

**WHEREAS**, the Leto Compressor Station is proposed to be located off of Oak Road on property owned by Tricia Gizienski identified as Block and Lot No. 1668-R-91 in the Allegheny County Department of Real Estate (“the Property”); and

**WHEREAS**, the Property is located in the Township’s I Industrial Zoning District; and

**WHEREAS**, a timely and duly advertised conditional use hearing was commenced before the Township Board of Supervisors (“the Board”) on September 26, 2023 and continued to October 4, 2023, for a total of two (2) nights of hearings which included hours of testimony presented by the Applicant, party-objectors, as well as public comment.

**NOW THEREFORE**, after careful review of the testimony and evidence presented at the above-referenced public hearings, the West Deer Township Board of

Supervisors hereby makes the following Findings of Fact, Conclusions of Law and Decision:

**FINDINGS OF FACT**

1. The foregoing recitals are incorporated herein by reference.

**Background / Introduction**

2. The Township of West Deer, Allegheny County, Commonwealth of Pennsylvania (the "Township") is a home rule municipality with its offices located at 109 East Union Road, Cheswick, Pennsylvania 15024.
3. On or about June 30, 2023, Applicant filed a Conditional Use Application and supporting documents totaling nearly six hundred (600) pages in length (collectively "the Application") seeking approval from the Township to construct and operate the Leto Compressor Station on a 48 acre property off of Oak Road owned by Tricia Gizienski in the Township's I Industrial Zoning District. Applicant's Ex. A
4. In connection with its conditional use application, Hyperion also submitted a land development application totaling nearly 400 pages of materials.
5. The Township Planning Commission reviewed the Leto Compressor Station application on July 27, 2023, and August 24, 2023. However, at the conclusion of the second meeting, the Planning Commission took no action on the application.

## **Township Zoning Ordinance Requirements**

6. All references to Township ordinances are made in accordance with the Code of the Township of West Deer (“Code”) adopted on April 20, 2016, as amended, including the Township Zoning Ordinance, Chapter 210 of the Code (“Zoning”).
7. The Zoning Ordinance regulates oil and gas development within the Township, setting forth specific requirements and restrictions. Zoning Ordinance, Section 210-120.A(21).
8. A “natural gas compressor station” is authorized as a conditional use in multiple zoning districts, including the I Industrial District in which the Property is located, provided it is located more than 1,200 feet from any preexisting building located off of the property. Zoning Ordinance, Section 210-120.A(21)(a)[3].

## **The Public Hearings On The Application**

9. A duly advertised public hearing on the Application was held before the Board commencing on September 26, 2023, which hearing was subsequently continued to and concluded on October 4, 2023.
10. At the commencement of the public hearing on September 26, 2023, a number of Township residents sought Individual Party Objector status.
11. The Board granted party status to those individuals who resided within close proximity to the proposed Compressor Station. 9/26/23, at 10. A list of those individuals granted party status (“Individual Objectors”) is attached as **Appendix A**.

12. At the public hearing on September 26, 2023, Tim Resciniti testified that he represented an unincorporated association known as Concerned Residents of West Deer (“CROWD”), whose membership included some of the Individual Objectors. The Board granted party status to CROWD.
13. The following witnesses testified on September 26, 2023:
  - i. For Applicant, Ryan Dailey; and
  - ii. For Applicant, Jeremy Burden.
14. The following witnesses testified on October 4, 2023:
  - i. For Applicant, Tage Rosendahl;
  - ii. For CROWD, Victorian Austin; and
  - iii. Individual Objector, Mark Thompson.
15. On October 4, 2023, other non-party Township residents/taxpayers made public comments.
16. During the course of the hearings, the Township, Applicant, CROWD, Individual Objectors, and members of the public introduced, or attempted to introduce, into the record various exhibits. A list of the exhibits is attached as **Appendix B**.

### **Applicant’s Witnesses and Evidence In Support Of The Application**

*Witness—Ryan Dailey*

17. Applicant’s first witness was Ryan Dailey, a licensed professional engineer and project manager with Civil & Environmental Consultants who oversaw

the environmental studies, site civil engineering design, and the state and local permitting for the Leto Compressor Station. Tr. 9/26/23, at 17.

18. Mr. Dailey provided general testimony as to the proposed location of the proposed Leto Compressor Station.
19. Mr. Dailey testified that the Property, which contains approximately 48 acres, is owned by Tricia Gizienski. Tr. 9/26/23, at 17; Hyperion Exhibit A.4.
20. The existing uses of the Property include woods on the lower portions of the Property, and reclaimed coal mining areas at the top of the hill. Tr. 9/26/23, at 18; Hyperion Exhibit A.4.
21. Mr. Dailey confirmed that the Township Zoning Ordinance requires a 1,200-foot setback from the edge of a compressor station pad to the nearest existing buildings, and testified that the nearest building to the proposed Leto Compressor Station is the Dollar General store located directly to the south that is 1,204 feet from the edge of the compressor station pad to the edge of the Dollar General building. Tr. 9/26/23, at 18-19; Hyperion Exhibit A.4.
22. Mr. Dailey further explained that to the east<sup>1</sup>, the closest building is over 1,212 feet from the edge of the compressor station pad; to the southwest, the closest building is over 1,205 feet from the edge of the pad; to the west, the nearest building is over 2,600 feet from the edge of the compressor station pad; and directly to the north, the nearest building along Lick Road

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<sup>1</sup> The transcript states “west.” However, Exhibit A.4 shows this building as being to the east of the pad.

is approximately 1,675 feet from the edge of the compressor station pad. Tr. 9/26/23, at 18-19; Hyperion Exhibit A.4.

23. Mr. Dailey explained that the buildings closest to the 1,200-foot setback were located using reflectorless survey methods, which utilize laser technology set up on either a street right-of-way or a neighboring property to identify a distance between a particular location to an existing building. Tr. 9/26/23, at 19-20.
24. He explained that the laser technology provides very accurate distance information and the survey information is within a few inches of accuracy. Tr. 9/26/23, at 19-20.
25. Mr. Dailey clarified that for buildings located well beyond the 1,200-foot setback, the distances were digitized based on aerial imagery. Tr. 9/26/23, at 19-20.
26. Mr. Dailey testified that access to the Leto Compressor Station will be via Oak Road and the Leto Well Pad which is proposed to be constructed on the same Property. Tr. 9/26/23, at 18; Hyperion A.4.
27. He explained that the Leto Well Pad access road is approximately 1,500 feet long from its connection with Oak Road, while access to the compressor station from the back side of the Leto Well Pad will be via an approximate 260-foot-long gravel access drive. Tr. 9/26/23, at 20-21; Hyperion Exhibit A.4.
28. The dimensions of the Leto Compressor Station pad will be approximately 220 feet by 180 feet, which is substantially smaller than the Leto Well Pad. Tr. 9/26/23, at 21; Hyperion Exhibit A.4.

29. Mr. Dailey testified that stormwater runoff from the Leto Compressor Station pad and access road will drain toward and be captured by a proposed managed release concept BMP located just to the north of the compressor station pad. Tr. 9/26/23, at 21; Hyperion Exhibit A.4
30. He explained that the total limit of disturbance (“LOD”) for the Leto Compressor Station is approximately 3.7 acres and overlaps the Leto Well Pad LOD. Tr. 9/26/23, at 21; Hyperion Exhibit A.4.
31. Mr. Dailey confirmed that the erosion and sedimentation control permit, similar to any NPDES permit required for commercial development, is currently under review by the Pennsylvania Department of Environmental Protection (“DEP”). Tr. 9/26/23, at 21; Hyperion Exhibit A.4.
32. He clarified that chain-linked fencing will be installed around the entire perimeter of the Leto Compressor Station pad while access to the compressor station pad will be via a locked gate, and emergency responders will have access to the lock at all times. Tr. 9/26/23, at 22.
33. Mr. Dailey testified that at the request of the Township’s Planning Commission, a landscaping plan was prepared to reestablish as many trees as possible in areas where trees would be removed to construct the Leto Compressor Station site, as well as to provide additional screening for the proposed compressor station building. Tr. 9/26/23, at 22; Hyperion Exhibit B.
34. Specifically, a total of 53 trees are proposed to be planted, consisting of a combination of Eastern Red Cedar, Red Pine, American Sycamore, White

Oak, and America Hornbeam, all typically being eight to twelve feet tall when they are planted. Tr. 9/26/.23, at 23; Hyperion Exhibit B.

35. Additionally, a variety of tree species are proposed to be planted around the bottom of the proposed fill slope along the LOD, and a small cluster of trees is proposed to be planted directly upslope of the proposed compressor station building. Tr. 9/26/23, at 22-23; Hyperion Exhibit B.

36. Mr. Dailey testified that the proposed haul route for the Leto Compressor Station will be the same haul route approved for the Leto Well Pad that follows I-79 to State Route 910 east to Oak Road, a state-owned road, to the Leto Well Pad entrance. Tr. 9/26/23, at 23-24; Hyperion Exhibit A.7.

37. He further testified that Oak Road is a weight-restricted road and Hyperion will post the necessary bonds for the use of Oak Road. Tr. 9/26/23, at 23-24; Hyperion Exhibit A.7.

38. Mr. Dailey explained that the majority of traffic to the Leto Compressor Station will occur during the construction phase, but after construction is complete, only an occasional passenger-type vehicle or occasional truck to haul off produced water is expected to access the compressor station site. Tr. 9/26/23, at 24.

39. The Board finds Mr. Dailey to be a credible witness.

*Witness—Jeremy Burden*

40. Applicant's second witness was Jeremy Burden, the Vice-President of Engineering and Construction for Hyperion, who is responsible for



overseeing the design and construction of Hyperion's compressor stations.  
Tr. 9/26/23, at 36.

41. Mr. Burden testified that both he and his team who were tasked with designing and operating the Leto Compressor Station have extensive years of experience in the design, construction, and operation of compressor station facilities. Tr. 9/26/23, at 57-58.
42. Mr. Burden explained that the proposed Leto Compressor Station will utilize two compressor units that will remain the same, as they are sized appropriately for the wells it will serve and by the footprint of the site itself. Tr. 9/26/23, at 42.
43. Mr. Burden provided an overview of natural gas compression systems. Tr. 9/26/23, at 37-38.
44. He explained that the Leto Compressor Station will allow Hyperion to continuously flow natural gas into the Eastern Gas transmission system, and ancillary equipment, such as dehydration equipment that is used to remove water from a natural gas stream to meet the delivery tariffs of Eastern Gas, will also be located on the Leto Compressor Station site. Tr. 9/26/23, at 37-38.
45. Mr. Burden also provided an overview of the general layout and main elements of the Leto Compressor Station, which includes pig launchers and receivers that will be used to support gas flow from the Leto Well Pad and the proposed Tyche Well Pad to the compressor station site and then delivery to an interconnect with the Eastern Gas transmission line. Tr. 9/26/23, at 38; Hyperion Exhibit A.5.

46. Mr. Burden explained that Hyperion will use filtration vessels that allow for the removal of any free water from the gas stream and will provide the ability to filter the gas as it goes through the system. Any water collected is transported to Hyperion's fluid tanks located on the northern side of the pad and as the gas flow exits the filters it enters the compression system in order to maximize the volumes and pressure to optimize the flow of gas from the wellheads to the Eastern Gas system. Tr. 9/26/23, at 38-39; Hyperion Exhibit A.5.
47. Mr. Burden testified that the buildings on the Leto Compressor Station site will house the station controls and electrical and communications equipment, which include the Supervisory Control and Data Acquisition ("SCADA") System. Tr. 9/26/23, at 39-40; Hyperion Exhibit A.5.
48. Specifically, the site will have a backup natural gas generator to provide secondary power in the event grid power is lost. Tr. 9/26/23, at 39-40; Hyperion Exhibit A.5.
49. Mr. Burden confirmed that the generator is tested on a general test cycle one hour per week, typically during midday. Tr. 9/26/23, at 39-40; Hyperion Exhibit A.5.
50. Mr. Burden testified that the compressor station building is a pre-engineered 60-foot wide, 97-foot long, and 35-foot-high metal building that fully encloses both compressor units and will be clad in Dryvit to comply with any architectural standards required by the Township. Tr. 9/26/23, at 40-42; Hyperion Exhibit A.5.

51. Mr. Burden clarified that the compressor station building will be designed for a single phase of construction and there are no expansion plans for the facility. Tr. 9/26/23, at 40-42; Hyperion Exhibit A.5.
52. Mr. Burden explained that the Leto Compressor Station will be equipped with interior and exterior lighting -- specifically, dark sky-compliant LED lights will be installed above its doors to provide safe access around the immediate building area and downward-directed dark sky-compliant exterior lighting will be provided on light poles approximately 25 feet in height, positioned around the building and the compressor station. Additionally, the lighting will only be utilized when personnel need to come onto the site at night and will be turned off when leaving the site. 9/26/23, at 41-42, 45; Hyperion Exhibit A.5.
53. Mr. Burden also reviewed the height of the various pieces of equipment on the Leto Compressor Station site and confirmed that the dehydration tower will be 35 feet in height; the water storage tanks will be 20 in height; the backup generator will be 15 feet in height; the filtration unit will be approximately 20 feet in height; and the control building will be 12 feet by 40 feet and 15 feet in height. Tr. 9/26/23, at 42-43; Hyperion Exhibit A.5.
54. Mr. Burden testified that traffic during the civil construction phase of the project will consist of 20-30 light-passenger type vehicles per day, and under 12 large deliveries per day for the duration of the civil and mechanical construction phases. Tr. 9/26/23, at 43.
55. Mr. Burden also clarified that all traffic during the construction phase will occur during daylight hours. Tr. 9/26/23, at 43.

56. He explained that during the operational phase of the Leto Compressor Station, traffic is anticipated to be one to two light-passenger type vehicles per day and water trucks are anticipated to come to the site once a week to remove water from the tanks on the site. Tr. 9/26/23, at 43.
57. Mr. Burden also provided an overview of the SCADA system. Tr. 9/26/23, at 44.
58. He explained that SCADA is an unmanned system that enables Hyperion to remotely monitor various data points in terms of pressure, temperatures, and flow rates for both normal and abnormal operations. Tr. 9/26/23, at 44.
59. He confirmed that SCADA provides Hyperion with the ability 24/7 to remotely isolate the entire system or the entire compressor station using an Emergency Shutdown (“ESD”) system that is located on the site. Tr. 9/26/23, at 44.
60. Mr. Burden explained that the ESD places operations in a safe state by blocking off all gas coming in and exiting the compressor station and safely venting it if necessary. ESD buttons are located around the compressor station site to manually enable an emergency shutdown if necessary. Tr. 9/26/23, at 45.
61. He confirmed that air emissions for the Leto Compressor Station will be regulated and permitted by the Allegheny County Health Department (“ACHD”). Tr. 9/26/23, at 46.
62. Mr. Burden also reviewed the sound mitigation methods built into Hyperion’s standard compressor station design. Tr. 9/26/23, at 46.

63. As part of his testimony, Mr. Burden provided an extensive overview of the sound insulation properties and features designed for the compressor building. Tr. 9/26/23, at 47.
64. He explained that the compressor building is equipped with four to six inches of mineral wool insulation and intake and exhaust vent silencers are typically installed at every opening in the building. Tr. 9/26/23, at 47.
65. Mr. Burden explained that Hyperion also takes additional steps to control sound levels, such as using minimum acoustic geometry fans with an engineered variable drive frequency designed to minimize noise emissions by limiting the tip speed of the fans. Tr. 9/26/23, at 47.
66. Hyperion also utilizes extreme hospital-grade exhaust silencers for compressor engines that provide 45 to 60 decibels of engine noise attenuation to dampen any sound exiting or potentially exiting the compressor station building. Tr. 9/26/23, at 48.
67. Mr. Burden clarified that civil construction of the Leto Compressor Station is projected to begin in the third or fourth quarter of 2024. Tr. 9/26/23, at 48.
68. Specifically, the mechanical construction phase is projected to be completed in two phases: the dehydration phase and then the installation of the compressors. Tr. 9/26/23, at 48-49.
69. The dehydration phase, which includes the installation of filtration dehydration tanks, is projected to take place in the first quarter of 2025, and the installation of the compressors is projected to occur in 2028. Tr. 9/26/23, at 48-49.

70. Mr. Burden indicated that applications for the required state permits were submitted to the Pennsylvania Department of Environmental Protection (“DEP”) in July of 2023. Tr. 9/26/23, at 48.
71. Additionally, he clarified that permits required by the ACHD would be applied for in conjunction with the compression phase of the project. Tr. 9/26/23, at 48.
72. The Board finds Mr. Burden to be a credible witness.

*Witness—Tage Rosendahl*

73. Applicant’s third witness was Tage Rosendahl, the regional manager for Acoustical Control who oversees its consulting services and construction operations in the northeast United States and Canada. Specifically, he works with Acoustical Control’s engineers and clients to gather and collect all required data in order to generate sound models which he reviews and signs off on. Tr. 10/4/23, at 75-76, 78.
74. He has also testified at other public hearings on sound-related matters, including public hearings for Olympus and Hyperion, as well as for other clients. Tr. 10/4/23, at 76-77.
75. Mr. Rosendahl provided an overview of a sound impact assessment (“SIA”), which is a computer-generated model utilized to aid in determining the impact of noise on the surrounding areas. Tr. 10/4/23, at 77.
76. Mr. Rosendahl testified that he has been involved in hundreds of SIAs related to natural gas wells and has been involved in more than 20 SIAs for natural gas compressor stations and other similar facilities and Acoustical

Control has been involved in close to 100 SIAs for compressor stations and other similar facilities. Tr. 10/4/23, at 78.

77. He explained that Acoustical Control serves the oil and gas, wind, solar, construction, and data center industries, providing noise monitoring (ambient measurements), vibration monitoring, sound impact assessments, along with mitigation strategies and implementation. Tr. 10/4/23, at 76.
78. Acoustical Control was retained by Hyperion to prepare an SIA for the proposed Leto Compressor Station. Tr. 10/4/23, at 78; Hyperion Exhibit C.
79. Mr. Rosendahl explained that when conducting an SIA, Acoustical Control takes into account all of the noise generators that will be operating around and in the compressor station facility, along with the layouts of the proposed equipment and the data specific to the equipment provided by Hyperion. This equipment includes engines, fans, compressors, and all building and silencing equipment. Tr. 10/4/23, at 78-79; Hyperion Exhibit C.
80. Mr. Rosendahl testified that when preparing an SIA, Acoustical Control uses a variety of noise inputs depending on the sources it is monitoring. Tr. 10/4/23, at 77.
81. He explained that the computer model used by Acoustical Control uses a conservative approach and does not factor in vegetation when modeling sound levels. Tr. 10/4/23, at 77.
82. Acoustical Control uses Hyperion's standard building design, which includes a pre-engineered metal building with fiberglass and mineral acoustical insulation, insulated garage and man doors, intake and exhaust

fan silencers, and anything located outside of the building. Tr. 10/4/2023, at 79; Hyperion Exhibit C.

83. With regard to the mitigation measures factored into the SIA for the process coolers on the Leto Compressor Station site, Mr. Rosendahl testified that Hyperion utilizes minimum acoustic geometry fans, which are low noise emission fans that limit the speed of the fans to reduce the amount of noise they create. Tr. 10/4/23, at 79-80; Hyperion Exhibit C.
84. Mr. Rosendahl testified that, in his opinion, the equipment and mitigation measures being implemented by Hyperion are state-of-the-art. Tr. 10/4/23, at 80.
85. Mr. Rosendahl further testified that upon request from the Township Planning Commission, Acoustical Control factored into the SIA any potential noise created by the temporary generator on the Leto Compressor Station site that will be tested approximately one hour per week. Tr. 10/4/23, at 80-81; Hyperion Exhibit C.
86. He explained that the SIA modeled 47 receiver points around the proposed Leto Compressor Station in order to determine projected noise levels at those points. Tr. 10/4/23, at 81-82, 101-102; Hyperion Exhibit C.
87. Mr. Rosendahl testified that Receiver DG, located at the Dollar General store on Oak Road, is the closest receptor point, located 1,204 feet from the Leto Compressor Station pad. Tr. 10/4/23, at 82; Hyperion Exhibit C.
88. The next closest receptor points are Receiver 9, located 1,205 feet from the compressor station pad, Receiver 8, located 1,212 feet from the compressor station pad, Receiver 1, located 1,222 feet from the compressor station pad,



and Receiver 2, located 1,269 feet from the compressor station pad. Tr. 10/4/23, at 82; Hyperion Exhibit C.

89. Receivers 8 and 9 are located in close proximity to the Dollar General store while Receivers 1 and 2 are located to the east of the proposed compressor station site, near the terminus of Hemlock Street. Tr. 10/4/23, at 82; Hyperion Exhibit C.
90. Mr. Rosendahl testified that the SIA predicted the highest projected decibel level to be at Receiver 11 at 48.9 dBA and the lowest projected decibel level to be at Receiver 31 at 27.8 dBA. Tr. 10/4/23, at 82-83; Hyperion Exhibit C.
91. He explained that the projected sound levels at all of these receivers are well below the Township's Zoning Ordinance limit of 65 dBA. Tr. 10/4/23, at 82-83; Hyperion Exhibit C.
92. Mr. Rosendahl explained that Receiver 11 is located northwest of the Leto Compressor Station. Tr. 10/4/23, at 82-83; Hyperion Exhibit C.
93. He reviewed the projected sound levels at the closest receiver points, which projected sound levels of 44.1 dBA at the Dollar General Store, 43.5 dBA at R-9, 41.5 dBA at R-8, 41.5 dBA at R-1, and 41.4 dBA at R-2. Tr. 10/4/23, at 82-83; Hyperion Exhibit C.
94. Mr. Rosendahl explained that, by way of comparison, the sound level at a quiet home is approximately 40 dBA, at a quiet street is approximately 50 dBA, and a normal conversation is approximately 60 dBA. Tr. 10/4/23, at 84; Hyperion Exhibit C.
95. Mr. Rosendahl indicated that with regard to the aggregation of sound from the compressor station and ambient sound levels, there would be a slight

increase in decibel levels, but the increase is dependent upon the proximity of the receiver to ambient noise producers and what those noise producers are. Tr. 10/4/23, at 97-98.

96. Mr. Rosendahl testified that with regard to vehicle traffic to the site during the permanent operation of the Leto Compressor Station, the noise from one passenger-type vehicle traveling up Oak Road and turning up the access road would, as an aggregate, be significantly less when compared with the hundreds or more passenger vehicles that might be traveling on Oak Road or visiting the Dollar General store. Tr. 10/4/23, at 98-99.
97. Mr. Rosendahl testified that, in his opinion, the equipment and mitigation strategies proposed to be installed by Hyperion are the main factors why the projected sound levels are well below the limits set forth in the Zoning Ordinance. Tr. 10/4/23, at 83.
98. He explained that Acoustical Control also undertook an assessment of the sound levels for all hours of the week, except for the one hour during the testing of the emergency generator, and while these results were not included in the SIA report, the sound measurements were several decibels less than those identified in the SIA. Tr. 10/4/23, at 83-84.
99. The Board finds Mr. Rosendahl to be a credible witness.

**CROWD's and Individual Party Objectors' Testimony And Evidence In Opposition Of  
The Leto Compressor Station**

*Witness— Victoria Austin*

100. On behalf of CROWD, Ms. Austin read a statement into the record requesting two proposed conditions: (1) To condition the approval of the

Leto Compressor Station on the outcome of the legal process on the Leto Well Pad appeal; and (2) require that the compressor station generate no noise detectable by the human ear above the ambient level at residential property lines. Tr. 10/4/23, at 103-106; CROWD Exhibit 2.

### **Cases of Individual Objectors**

*Witness—Mark Thompson*

101. Mr. Thompson is a party objector who resides at 358 Oak Road. During his testimony, Mr. Thompson expressed concerns about noise, traffic, and safety, and noted that he does not believe that Hyperion is a good neighbor. Tr. 10/4/23, at 107-110.

### **CONCLUSIONS OF LAW**

102. The Subject Property is located in the I Zoning District where, according to 210-120.A(21)(a)[3] of the Zoning Ordinance, a “natural gas compressor station” is authorized as a conditional use in multiple zoning districts in the Township, including the I Industrial District. FOF, ¶ 8.
103. A conditional use is a permitted use to which an applicant is entitled if the applicant demonstrates compliance with the specific, objective requirements contained in the zoning ordinance. *McGinty v. Zoning Bd. of Adj. of the City of Pittsburgh*, 717 A.2d 34 (Pa. Commw. Ct. 1998).
104. The respective burdens of an applicant and any potential objector to a conditional use application were delineated by the Pennsylvania Commonwealth Court in *Bray v. Zoning Board of Adjustment*. *Bray* articulated three types of standards applicable

to a conditional use case. Those standards, and the applicable burdens are as follows:

- a. Specific requirements, ‘e.g., categorical definition of the [conditional use] as a use type or other matter, and objective standards governing such matter as a special exception and generally: The applicant has both the duty [of presenting evidence] and the burden [of proof].’
  - b. General detrimental effect, ‘e.g., to the health, safety and welfare of the neighborhood: Objectors have both the duty and burden.’
  - c. General policy concern, ‘e.g., as to harmony with the spirit, intent or purpose of the ordinance: Objectors have both the duty and the burden.’ 410 A.2d 909, 913 (Pa. Commw. Ct. 1980).
105. Initially, the applicant for a conditional use has both the persuasion burden and the initial evidence presentation duty to show that the proposal complies with the “terms of the ordinance” which expressly govern such a grant. *Bray*, 410 A.2d at 910.
106. Once the applicant for a conditional use meets its burden of persuading a governing body that its proposed use satisfies the ordinance’s specific requirements, it is presumed that the local legislature has already considered that such use satisfies local concerns for the general health, safety and welfare and that such use comports with the intent of the zoning ordinance. *Szewczyk v. Zoning Bd. of Adjustment*, 654 A.2d 218, 221-22 (Pa. Commw. Ct. 1995).
107. The burden then shifts to the objectors to rebut the presumption and persuade the governing body that the proposed use will have a generally detrimental effect. *Broussard v. Zoning Bd. of Adjustment*, 831 A.2d 764, 772 (Pa. Commw. Ct. 2003).
108. It is the duty of the Board in the exercise of its discretionary power to determine whether a party has met its burden of proof. *Pennsy. Supply, Inc. v. Zoning Hearing*

*Bd.*, 987 A.2d 1243, 1250-1251 (Pa. Commw. Ct. 2009). Determinations as to the credibility of witnesses and the weight to be given to the evidence are matters left solely to the Board in the performance of its fact-finding role. *Id.*

109. A local governing body is entitled to considerable deference in interpreting its zoning ordinance. *Aldridge v. Jackson Twp.*, 983 A.2d 247 (Pa. Commw. Ct. 2009).

#### **Compliance with Specific Ordinance Criteria**

110. The proposed project falls within the definition of “natural gas compressor station,” which is authorized as a conditional use in the I Industrial District in which the Property is located. Zoning Ordinance, Section 210-120.A(21)(a)[3]. FOF, ¶ 8.
111. Section 210-120.A(21)(a)[3] of the Zoning Ordinance requires that a natural gas compressor station be located at least 1,200 feet from an existing building. Zoning Ordinance, Section 210-120.A(21)(a)[3]. FOF, ¶ 8.
112. The uncontroverted testimony of Mr. Dailey is that the Leto Compressor Station pad will be located, at its closest, 1,204 feet from the nearest building, the Dollar General Store. FOF, ¶ 21.
113. Accordingly, Hyperion meets the setback requirement of the Zoning Ordinance.
114. Additionally, CROWD and the Individual Party Objectors raised no issue regarding Hyperion’s compliance with the specific criteria of the Zoning Ordinance.

#### **Compliance with General Ordinance Criteria**

115. CROWD and the Individual Party Objectors had the presentation burden with regard to all general policy concerns and general detrimental effects.

116. Objectors seeking to defeat the conditional use must show that the impact of the proposed use “will be greater than would normally be expected [for that use] and would pose a substantial threat to the health, safety and welfare of the community.”
117. Objectors must provide ““evidence that there is more than a mere speculation of harm.”” *Szewczyk v. Zoning Bd. of Adjustment*, 654 A.2d 218, 224 (Pa. Commw. Ct. 1995), *citing Abbey v. Zoning Hearing Bd.*, 559 A.2d 107, 110 (Pa. Commw. Ct. 1989) (emphasis in original).
118. In fact, they must come forward with evidence establishing with a high degree of probability that the use in question will have an impact on the community beyond that normally associated with that use. *In re Cutler Grp., Inc.*, 880 A.2d 39, 43 (Pa. Commw. Ct. 2005) (*quoting* Robert S. Ryan, 1 Pennsylvania Zoning Law and Practice §5.2.6 (2003)) (“Moreover, the degree of harm required to justify denial of the conditional use must be greater than that which normally flows from the proposed use.”)
119. The requirement that objectors bear the burden of evidence presentation as to general ordinance criteria is true regardless of any contrary terms contained in a zoning ordinance.
120. A conditional use applicant never has the initial presentation burden with regard to the general, subjective criteria. *Williams Holding Grp., LLC v. Bd. of Supervisors of W. Hanover Twp.*, 101 A.3d 1202, 1212-13 (Pa. Commw. Ct. 2014).
121. The Board has, pursuant to its legislative authority, authorized a natural gas compressor station as a conditional use in the I Industrial District in which the Property is located.

122. It is well-established Pennsylvania law that a zoning ordinance's designation of a use as a conditional use creates a legislative presumption that the particular use is appropriate in the zoning district in question and consistent with the public health, safety and welfare. *See e.g., MarkWest Liberty Midstream and Resources, LLC v. Cecil Township Zoning Hearing Bd.*, 184 3d 1048 (Pa. Commw. Ct. 2018).
123. Because the Board, by ordinance, has authorized a natural gas compressor station as a conditional use in the I Industrial District in which the Property is located, the Township has already decided that a natural gas compressor station at the Property is consistent with the general public health, welfare, and safety. FOF, ¶ 8.
124. Furthermore, because Hyperion has satisfied its burdens of presentation and proof with respect to the specific objective criteria of the Zoning Ordinance, the presumption that the use is consistent with the health, safety, and welfare of the community applies and Applicant was not required to present evidence with respect to the same. *See MarkWest*, 184 A.3d at 1059; *Allegheny Tower Assoc. v. City of Scranton Zoning Hearing Bd.*, 152 A.3d 1118, 1123-24 (Pa. Commw. Ct. 2017); *Greaton Properties v. Lower Merion Twp.*, 796 A.2d 1038, 1045-46 (Pa. Commw. Ct. 2002).
125. The Board finds that CROWD and the Individual Objectors have not met their burden, as it was not enough for CROWD and the Individual Objectors to express general concerns about potential impacts of Applicant's proposed compressor station, nor was it enough for them to present evidence of alleged adverse impacts from oil and gas development generally.

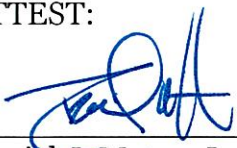
126. Instead, they were required to present specific evidence that Applicant's proposed compressor station would create adverse impacts beyond those normally associated with oil and gas development.
127. The general health and safety issues that CROWD and the Individual Objectors raised were aimed at alleged impacts of the oil and gas industry generally, not specific to any unusual or abnormal impacts at the proposed compressor station, or involved broader environmental or operational impacts within the jurisdiction of DEP and other regulatory agencies.
128. While the Board acknowledges that these environmental issues are certainly important, they are not within the jurisdiction of the Township and this Board.
129. While the Board is sympathetic to the understandable concerns residents have about the proposed compressor station, CROWD and the Individual Objectors failed to meet their burden.
130. Under Sections 603(c)(2) and 913.2(a) of the Municipalities Planning Code, the governing body has the statutory authority to attach "reasonable conditions and safeguards . . . as it may deem necessary to implement the purposes of [the Municipalities Planning Code] and the zoning ordinance" *See* 53 P.S. §§ 10603(c)(2); 10913.
131. Accordingly, it is the decision of the Board to grant approval of Applicant's Conditional Use Application subject to reasonable conditions.



**DECISION**

For the reasons set forth above, Hyperion Midstream LLC's Conditional Use Application for the Leto Well Pad Compressor Station is hereby GRANTED subject to the conditions set forth in Appendix C, which conditions are incorporated herein by reference.

ATTEST:



\_\_\_\_\_  
Daniel J. Mator, Jr.

Township of West Deer

By: 

\_\_\_\_\_  
Chair of Board of Supervisors

I, Daniel J. Mator, Jr., as Township Manager for the Township of West Deer, County of Allegheny, Commonwealth of Pennsylvania, certify that this document constitutes an official communication by the Township of West Deer and accurately reflects its decision in this matter.



\_\_\_\_\_  
Daniel J. Mator, Jr.  
Township Manager

**Appendix A**  
**Individual Objectors**

1. Concerned Residents of West Deer (CROWD) represented by Timothy Resciniti and Victoria Austin
2. Jim Shuey
3. Ronald Zielinski
4. Robert Hutchinson
5. Yvonne Hutchinson
6. Mark Thompson
7. Norann Shuey
8. Victoria Austin

**Appendix B**  
**List of Exhibits**

1. Applicant Exhibit A- Conditional Use Application
2. Applicant Exhibit B- Landscape Plan
3. Applicant Exhibit B- Sound Impact Assessment
4. CROWD Exhibit 1- List of CROWD Members
5. CROWD Exhibit 2- CROWD Statement
6. Township Exhibit 1-Official Notice of the Township of West Deer and photos of Notice posted

**Appendix C**  
**Conditions of Approval**

1. Applicant shall have obtained from the appropriate Commonwealth, and if applicable, Federal and/or County, regulatory agencies or authorities all permits required to be issued in accordance with applicable laws and regulations for the proposed activity at the Applicant's site and copies of said permits shall be provided to the Township prior to any activity taking place authorized by those permits.
2. Applicant shall at all times comply with all applicable laws and regulations of the Commonwealth of Pennsylvania, County of Allegheny and the United States Federal Government as they relate to activities conducted by the Applicant within West Deer Township ("Township"). If the Applicant receives notice of any notice of violation from any State, County or Federal agency of any such law or regulation causing a public safety or serious environmental hazard in the Township, it shall give the Township notice as soon as practical, but in no event later than 24 hours of the Applicant receiving notice.
3. Applicant shall comply with Chapter 210-Section 120.A(21) — Gas and Oil Production contained in the Township Code of Ordinances.
5. The Applicant shall provide to the Township and first responders its Preparedness, Prevention and Contingency Plan and any updates thereto.
6. Prior to any construction activity, the Applicant shall provide the Emergency Response Plan to the Township and meet with the emergency management individuals designated by the Township.
7. Applicant shall comply with the idling limitations contained in the Pennsylvania Diesel-Powered Motor Vehicle Idling Act, Act 124 of 2008.
8. There shall be no activities associated with the proposed use that will result in malodorous gas or matter discernible at any point on or beyond the property lines of the site.
9. Applicant will provide adequate and obvious truck route signage, including "no compressor station traffic on unpermitted roads" signage, where necessary, to ensure the approved truck routes are utilized. Additionally, Applicant shall notify all contractors, subcontractors, suppliers and vendors of the approved truck route.
10. Applicant shall continue to review the efficiency and safety of all traffic plans and routes and will meet with the Township representatives to address issues regarding said plan or route, including traffic flow and safety.

11. Applicant agrees to restrict the operation of vehicles exceeding a gross weight of 10,000 pounds on Oak Road and Bairdford Road during those periods of time in which the Deer Lakes School District schedules morning and afternoon school bus drop-off and pickup on those roads. Applicant also shall provide a contact to the school's transportation office.
12. Applicant shall provide traffic control, including flag persons, traffic control devices and escorts, when reasonable, in order to maintain the safe flow of traffic.
13. Oak Road shall be improved and maintained as required by PennDOT. Bairdford Road shall be improved and maintained as required by Allegheny County.
14. Applicant shall inform its contractors and subcontractors that jake brake or engine brake usage on trucks is to be restricted.
15. Applicant shall post "Gas Well/Compressor Station Truck Traffic 25 MPH" signs on Oak Road and Bairdford Road prior to construction starting, if permitted by PennDOT and Allegheny County, respectively.
16. Applicant shall undertake reasonable efforts to prevent water, sediment, or debris from being carried onto any public street. Additionally, the access road shall be installed per Allegheny County permit approvals. If upon Township inspection of public roads, it is determined that mud is causing a public safety issue the roadway shall be cleared, cleaned and/or swept immediately. If through time, originally installed surfacing and/or implemented measures result in water, sediment or debris being carried onto any public street, said surfacing and measures shall be reevaluated and reconstructed to achieve the aforementioned results.
17. Applicant shall provide a schedule to the Township identifying anticipated dates for site construction and operations. The Township recognizes that said dates may be dependent upon variables such as weather, availability of equipment, leasing, permitting, production and the like. However, such scheduling shall be updated and provided to the Township on a periodic basis (no less than monthly) as requested by the Township.
18. There shall be no activities associated with the proposed use that will emit electrical disturbances adversely affecting the operation of radio or other equipment not located at the subject property.
19. All earth moving activities and stormwater management on the subject property shall be subject to the terms and conditions of a DEP-approved erosion and sedimentation control plan and all related applicable permits. A copy of said plan and permit are to be provided to the Township prior to such work is to begin and shall be on file at the construction site.
20. Applicant shall provide the Township with contact information which will allow

representatives of the Applicant to be contacted 24 hours a day, seven days a week to address an emergency as well as other issues and complaints. Said contact information shall also be clearly posted at the entrance to the site.

21. If a reasonable complaint is registered with the Township, the Applicant will respond to said complaint within 24 hours of notification and take whatever reasonable means necessary to alleviate and cure said complaint, should it be found to be with merit.
22. Applicant shall comply with all State and Federal regulations regarding the handling of any radioactive materials.
23. Applicant shall maintain a current list and Safety Data Sheet (SDS) for all chemicals used at the Property. The Applicant shall also provide SDS sheets to first responders upon request.
24. Applicant agrees to hold the Township harmless from any and all liability arising out of actions or non-actions committed by the Applicant, its representatives, contractors or subcontractors in connection with the construction or operation of the compressor station at the proposed site, excluding any such liability arising out of the negligence or intentional acts of the Township, its employees, officials, contractors or agents.
25. Applicant shall comply with all Township ordinances related to construction activity, and activity for construction of the proposed compressor station or access road. Hours of operation for construction shall be limited to sunrise to sunset. However, 24-hour operation of the compressor station shall be permitted.
26. Applicant shall notify contractors and subcontractors that they will be responsible for and shall remedy any damages they may cause to public or private properties within the Township. In the event the Township notifies the Applicant of a damage claim, Applicant will cooperate with the Township in identifying the potentially responsible contractor or subcontractor.
27. Applicant acknowledges that if it fails to meet and maintain any condition of this approval, the Township may enforce the same in accordance with applicable provisions of the Pennsylvania Municipalities Planning Code.
28. Prior to the commencement of operations at the Leto Compressor Station, the Applicant shall make a traffic impact fee payment to the Township based on the final calculation of peak hour trips, as approved by the Township traffic engineer, times the applicable impact fee rate forth in the Township's traffic impact fee ordinance.